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United States District Court  
Western District of Wisconsin

3:20-cv-1035

Stacey Tropp, individually and on behalf of  
all others similarly situated,

Plaintiff,

- against -

Complaint

Prairie Farms Dairy, Inc.,

Defendant

Plaintiff by attorneys alleges upon information and belief, except for allegations pertaining to plaintiff, which are based on personal knowledge:

1. Prairie Farms Dairy, Inc. (“defendant”) manufactures, distributes, markets, labels and sells ice creams labeled as “vanilla” under the Prairie Farms Small Batch brand, including “Premium Vanilla Bean Ice Cream.”

2. The relevant front label statements include “Premium Vanilla Bean Ice Cream,” “Small Batch,” “Farmer Owned,” “Made with Local Milk & Cream,” “Natural Ingredients,” a cow and a scoop of the product, with specks of vanilla bean seeds and three cured vanilla beans.



3. Unfortunately for consumers, the Product is not flavored mainly from vanilla beans and as a result, does not taste like vanilla.

4. Demand for real vanilla “has been steadily increasing...due to consumer demand for natural foods that are free of artificial ingredients.”<sup>1</sup>

5. According to one flavor supplier, today’s consumers “want real vanilla, not imitation [vanilla] flavoring.”

6. Vanilla comes from an orchid plant grown in the tropics.

7. The fruit pod, the vanilla bean is the raw material for vanilla flavorings.

8. The vanilla bean is heated in the sun for weeks, soaked in alcohol solution and its flavor constituents extracted (vanilla extract).

9. The popularity of vanilla in the 19<sup>th</sup> century led to the isolation of the most

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<sup>1</sup> Chagrin Valley Soap & Salve Company, FAQs, [Why Are The Prices of Vanilla Bean Products Always Increasing?](#)

predominant flavor component, vanillin.

10. Sensory evaluation of vanillin is mainly sweet, with a lackluster “chemical-like” taste and odor because it lacks the other molecules in vanilla.

11. This availability of low-cost vanillin resulted in foods purporting to contain vanilla, which either contained no vanilla or a trace or *de minimis* amount, boosted by synthetic vanillin.

12. Consumers would buy foods labeled as “vanilla” only to later discover they lack the richness and layered taste provided from vanilla beans.

13. However, vanillin separated from the rest of the vanilla bean does not constitute vanilla flavor.

14. The characterizing notes of vanillin must be accompanied by other compounds to produce the familiar flavor and aroma consumers are accustomed to as vanilla.

15. Vanilla’s unique and complex flavor is due to the many odor-active compounds such as acids, ethers, alcohols, acetals, heterocyclics, phenolics, hydrocarbons, esters and carbonyls, shown in the table below for a sample of vanilla extract.

MS Scan #	Area Integration	Peak Assignment	Peak Area %
67	16132	hexanal	0.0206
71	16235	butanediol isomer	0.0207
81	57370	butanediol isomer	0.0732
103	36387	3-methylbutyric acid	0.0464
115	33053	furfural	0.0422
141	27408	butanal, diethyl acetal	0.0350
262	18390	3-methylbutanal, diethyl acetal	0.0235
281	25224	hexanoic acid	0.0322
289	2729	methyl furfural	0.0035
299	52183	phenol + trace of benzaldehyde	0.0665
349	2385	1H-pyrrole-2-carboxaldehyde	0.0030
379	47287	limonene + benzyl alcohol	0.0603
397	13835	heptanoic acid	0.0176
409	31102	gamma-hexalactone	0.0397
415	19338	p-cresol	0.0247
425	4470	hexanal, diethyl acetal	0.0057
443	287479	guaiacol	0.3666
453	5947	nonanal	0.0076
477	10000	phenylethyl alcohol	0.0128
496	112067	?	0.1429
505	44668	benzoic acid + octanoic acid	0.0570
522	4551	diethyl succinate	0.0058
536	2461	ethyl benzoate	0.0031
544	11769	1,2-benzenediol	0.0150
555	145356	2-methoxy-4-methylphenol	0.1854
567	2537	methyl salicylate	0.0032
587	8552	hydroxy methyl furfural (HMF)	0.0109
594	5555	benzeneacetic acid	0.0071
605	101562	nonanoic acid	0.1295
624	6802	hydroquinone	0.0087
631	3864	4-methoxybenzaldehyde (p-anisaldehyde)	0.0049
642	6356	ethyl nonanoate	0.0081
653	53264	4-methoxybenzyl alcohol (p-anisyl alcohol)	0.0679
676	14481	cinnamyl alcohol	0.0185
685	16094	3-hydroxybenzyl alcohol	0.0205
718	12188570	3-hydroxybenzaldehyde + 4-ethoxymethylphenol	15.5440
751	122634	methyl cinnamate	0.1564
759	60715743	vanillin	77.4301
796	90669	methyl-p-methoxybenzoate (methyl paraben)	0.1156
809	2228588	vanillyl ethyl ether + trace of 4-hydroxy-3-methoxybenzyl alcohol	2.8421
832	224829	p-hydroxybenzoic acid	0.2867
839	37335	acetovanillone	0.0476
892	950342	vanillic acid	1.2120
908	405589	3,4-dihydroxybenzaldehyde	0.5172
935	82429	3,4-dihydroxy-5-methoxybenzaldehyde	0.1051
954	6212	ethyl homovanillate	0.0079
975	78148	syringaldehyde	0.0997
1266	14130	ethyl palmitate	0.0180
1518	21477	ethyl linoleate	0.0274
<b>78413588 Total</b>			<b>100.0000</b>

16. While vanillin (MS Scan # 759, 77.4301 Peak Area %) plays a significant role, it contributes less than one-third of the overall flavor/aroma impact of vanilla.

17. Methyl cinnamate (MS Scan # 751) and cinnamyl alcohol (MS Scan # 676, 0.0185) provide distinct cinnamon and creamy notes to vanilla.

18. P-cresol (MS Scan # 415, 0.0247) contributes flavor notes described as woody and spicy.

19. Acetovanillone (MS Scan # 839, 0.0476) provides a sweet, honey note.

20. P-hydroxybenzoic acid (MS Scan # 832, 0.2867) and vanillic acid (MS Scan # 892,

1.2120) are significant phenolic compounds which contribute to vanilla's aroma.

21. 4-methoxybenzaldehyde (p-anisaldehyde) (MS Scan # 631, 0.0049) provides creamy flavor notes to vanilla.

22. 4-methoxybenzyl alcohol (p-anisyl alcohol) (MS Scan # 653, 0.0679) provides floral notes.

23. Consumer and industry groups have long sought to prevent the deceptive practice where consumers are sold a food flavored as "vanilla" only to discover too late it lacks the richness and layered taste only provided by flavor from vanilla beans.

24. The earliest efforts to prevent fraud in vanilla products was the U.S. Pharmacopeia standard, which required a specific weight of vanilla beans as the source for vanilla extract.

25. The focus was on the weight of actual vanilla beans, because this would prevent companies from adding vanillin to a small amount of vanilla beans.

26. Consumer deception continued into the 20<sup>th</sup> century, and companies regularly deceived consumers by labeling their foods as flavored with "vanilla" despite containing only vanillin with caramel coloring.

27. Congress authorized regulations to prevent deceptive labeling of vanilla flavored foods, including ice cream.

28. For over fifty (50) years, companies adhered to these industry standards.

29. This meant consumers were informed about foods that purported to be "vanilla" because they were identified as imitation or artificial.

30. Where a food was labeled as "vanilla" without qualification, consumers understood that the flavoring was only from the ingredient of vanilla beans.

31. These regulations established custom and practice so that consumers' experience has

primed them to infer from a product's labeling whether the flavor source was entirely from the characterizing vanilla bean ingredient or not.

32. In early 2018, in response to reports of a surge in fraudulent vanilla flavored foods, the flavor industry – The Flavor and Extract Manufacturers Association of the United States or “FEMA” – urged companies to return to truthfully labeling vanilla foods so consumers would not be misled by artificial vanilla flavors where foods were labeled only with “vanilla.” *See* John B. Hallagan and Joanna Drake, FEMA, “[Labeling Vanilla Flavorings and Vanilla-Flavored Foods in the U.S.](#),” *Perfumer & Flavorist*, Vol. 43 at p. 46, Apr. 25, 2018 (“Hallagan & Drake”).

33. Vanilla ice cream is the top selling flavor of ice cream, and when consumers purchase it, they expect it to be flavored with vanilla flavoring derived from vanilla beans unless labeled otherwise.

34. The International Dairy Foods Association (“IDFA”) advises that any type of “vanilla ice cream,” such as “vanilla bean ice cream” should only contain flavoring from vanilla beans, *viz*, vanilla extract.<sup>2</sup>

35. The Flavor and Extract Manufacturers Association of the United States (“FEMA”) has also stated that any type of vanilla ice cream is required to be flavored only with flavoring from vanilla beans.

36. The IDFA and FEMA follow the same regulations established by the FDA and adopted by Wisconsin.<sup>3</sup>

37. However, Prairie Farms Vanilla Bean Ice Cream contains artificial vanilla flavoring, indicated by the misleading term “Natural Flavor” on the ingredient list instead of vanilla extract.

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<sup>2</sup> IDFA, *Ice Cream & Frozen Desserts Labeling Manual*, 2019 Ed.

<sup>3</sup> See 21 C.F.R. §135.110(f)(2)(i) (“If the food contains no artificial flavor, the name on the principal display panel or panels of the label shall be accompanied by the common or usual name of the characterizing flavor, e.g., ‘vanilla’”).

**INGREDIENTS:** CREAM, MILK, SUGAR, SKIM MILK, WHEY, STABILIZER (MONO AND DIGLYCERIDES, GUAR GUM, CELLULOSE GUM AND CARRAGEENAN), NATURAL FLAVOR, VANILLA BEAN.

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38. According to an article on Yahoo Food in 2015, “The One Thing You Need to Know When Buying Vanilla Ice Cream,” “Brands that print phrases like ‘natural vanilla’ [or ‘natural flavor’] on their packages may actually be pushing products that contain anything but.”<sup>4</sup>

39. The article interviewed the head of the tv show, America’s Test Kitchen, Jack Bishop, who “explains that counterfeit vanilla is a bigger problem than one might think, and implores smart shoppers to read labels before buying a pint of the stuff.”

40. Bishop continued, “Vanilla extract is the key to buying ice cream with good vanilla flavor...If it doesn’t say vanilla extract, walk on by” because the vanilla “taste” is “actually imitation extract made from wood pulp.”<sup>5</sup>

41. Dairy expert “Scott Rankin, a professor of food science at the University of Wisconsin-Madison, explained that the different wordings on the labels amount to an industry shorthand for specific kinds of natural or artificial flavorings.”

42. For instance, “natural vanilla flavor” often refers to “vanillin extracted from wood.”

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<sup>4</sup> Yahoo Food, [The One Thing You Need to Know When Buying Vanilla Ice Cream](#), May 20, 2015.

<sup>5</sup> See 21 C.F.R. §135.110(f)(2)(i) (“If the food contains no artificial flavor, the name on the principal display panel or panels of the label shall be accompanied by the common or usual name of the characterizing flavor, e.g., ‘vanilla’”).

43. “Natural flavor” on the other hand, “(with no mention of vanilla at all) indicates just a trace of natural vanilla (there’s no required level) and other flavorings such as nutmeg that merely trigger an association” with vanilla.

44. The “Natural Flavor” used in the Prairie Farms Vanilla Bean Ice Cream is a combination of vanilla and artificial vanilla flavor.

45. The listing of “natural flavor” in the ingredients and “vanilla bean ice cream” on the front prevents consumers from learning the truth about the Product’s “vanilla” taste.

46. Because the Product contains added artificial vanilla flavors, the ingredient list should indicate “natural and artificial flavors.”

47. Consumers are entitled to know whether the product they are buying is flavored with a vanilla flavoring derived from vanilla beans, in whole or in part.

48. Consumers prefer flavor from vanilla beans over artificial vanilla flavor due to taste and health, because vanilla is a natural product, compared to highly processed artificial vanilla flavorings with additives.

49. According to the IDFA, FEMA and FDA, if an ice cream labeled as “vanilla” has flavor from non-vanilla sources, that is considered an artificial flavor, which must be disclosed to consumers.

50. The issue of ice cream labeled as vanilla not containing any vanilla (or only a trace of vanilla) is over one hundred years old.



51. In 1920, The Annual Report of the Dairy and Food Commissioner of Wisconsin noted the importance of the flavoring used in ice cream:

In all too many instances we find that ice cream sold as vanilla ice cream is not vanilla ice cream but has been flavored by cheap imitations and compounds, in many instances producing flavors of the rankest kind.<sup>6</sup>

52. Where ice cream is labeled as “vanilla” and its flavor contains a trace of vanilla, supplemented imitation vanilla flavoring, it will not taste like vanilla.

53. Because vanillin is responsible for less than one-third of the overall flavor/aroma impact of vanilla, it is false and misleading to describe the Product’s taste as “vanilla” because it lacks detectable level of the odor-active compounds that are critical to the expected vanilla taste.

54. Analysis of the Product reveals an abnormal excess of vanillin relative to the amount and presence of the key odor-active compounds in authentic vanilla, which is a strong indicator it contains vanillin from non-vanilla sources.

55. For instance, the Product fails to reveal detectable levels of one or more compounds including methyl cinnamate, cinnamyl alcohol, p-cresol, acetovanillone, p-hydroxybenzoic acid, 4-methoxybenzaldehyde (p-anisaldehyde), 4-methoxybenzyl alcohol (p-anisyl alcohol) and vanillic acid.

56. More of the Product’s flavor is provided by artificial vanilla flavoring than vanilla from vanilla beans, which means it should be labeled “artificially flavored.”<sup>7</sup>

57. By omitting “artificially flavored” from the front label, consumers are not told that the (1) taste is not provided exclusively or predominantly from vanilla beans and (2) that the Product fails to taste like vanilla because it lacks the above-described odor-active compounds.

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<sup>6</sup> For the year ending June 30, 1920 at p. 47.

<sup>7</sup> See 21 C.F.R. §135.110(f)(2)(iii) (“If the food contains both a natural characterizing flavor and an artificial flavor simulating it, and if the artificial flavor predominates”).

58. Defendant knows consumers will pay more for the Product because the front label only states “vanilla” and not “artificially flavored” and “does not taste like real vanilla.”

59. Representing the Product as “Vanilla Bean” instead of “Artificially Flavored Vanilla Bean” is deceptive and misleading to consumers.

60. The Product’s inclusion of “Vanilla Bean” on the ingredient list, in the product name and picture is misleading because it gives consumers the misleading impression the Product contains more vanilla than it does.

61. However, these are not the remnant of vanilla beans which have provided their vanilla flavor to *this* Product, but exhausted vanilla bean specks.

62. Vanilla bean specks are the:

tiny black seeds that line the inside of a vanilla bean. When flavor houses extract vanilla beans to make vanilla extract, the goal is to extract all possible flavor from the bean, including its seeds. After the vanilla extract has percolated for an optimal time, the vanilla bean pods and seeds sink to the bottom and are filtered from the extract. As a final step, the vanilla bean seeds are sifted from the spent vanilla bean pods. The resulting bean pods and seeds are known as “exhausted,” because all flavor has been extracted.<sup>8</sup>

63. The addition of vanilla bean specks without any flavor gives the impression the Product contains more real vanilla than it does, when the opposite is true.

64. A reasonable consumer cannot follow up or learn the truth that the Product contains artificial vanilla flavors and vanilla beans without any flavor, from reading the Product’s ingredient list and the absence of disclosure elsewhere on the Product.

65. Defendant’s branding and packaging of the Product is designed to – and does – deceive, mislead, and defraud plaintiff and consumers.

66. Defendant sold more of the Product and at higher prices than it would have in the

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<sup>8</sup> Cook’s Blog, [Vanilla Bean Seeds: A Troubling New Trend](#), June 13, 2019.

absence of this misconduct, resulting in additional profits at the expense of consumers.

67. The value of the Product that plaintiff purchased and consumed was materially less than its value as represented by defendant.

68. Had plaintiff and class members known the truth, they would not have bought the Product or would have paid less for them.

69. As a result of the false and misleading labeling, the Product is sold at a premium price, approximately no less than \$ 4.99 per 1.5 quarts, excluding tax, compared to other similar products represented in a non-misleading way, and higher than the price of the Product if it were represented in a non-misleading way.

#### Jurisdiction and Venue

70. Jurisdiction is proper pursuant to Class Action Fairness Act of 2005 (“CAFA”). 28 U.S.C. § 1332(d)(2)

71. Under CAFA, district courts have “original federal jurisdiction over class actions involving (1) an aggregate amount in controversy of at least \$5,000,000; and (2) minimal diversity[.]” *Gold v. New York Life Ins. Co.*, 730 F.3d 137, 141 (2d Cir. 2013).

72. Plaintiff Stacey Tropp is a citizen of Wisconsin.

73. Defendant Prairie Farms Dairy, Inc., is a Illinois corporation with a principal place of business in Edwardsville, Madison County, Illinois and is a citizen of Illinois.

74. “Minimal diversity” exists because plaintiff Stacey Tropp and defendant are citizens of different states.

75. Upon information and belief, sales of the Product exceed \$5 million exclusive of interest and costs, and the aggregate amount in controversy exceeds \$5 million.

76. Venue is proper in this judicial district because a substantial part of the events or

omissions giving rise to the claim occurred in this district and defendant is deemed to reside in this district because it is subject to the court's personal jurisdiction in this State with respect to this action.

77. Venue is further supported because many class members reside in this District.

Parties

78. Plaintiff Stacey Tropp is a citizen of Wisconsin, Madison, Dane County.

79. Defendant Prairie Farms Dairy, Inc. is a Illinois corporation with a principal place of business in Edwardsville, Illinois, Madison County and is a citizen of Illinois.

80. Defendant is a dairy conglomerate operating throughout the Midwestern States, including Illinois, Wisconsin, Ohio, Michigan, Iowa, Minnesota, Wisconsin and Indiana.

81. During the relevant statutes of limitations for each cause of action alleged, plaintiff purchased the Product within her district and/or State for personal and household consumption and/or use in reliance on the representations of the Product.

82. Plaintiff Stacey Tropp purchased the Product approximately once a week throughout the past year at stores including Woodman's Market, 3817 Milwaukee St, Madison, WI 53714 and Hy-Vee, 3801 E Washington Ave, Madison, WI 53704.

83. Plaintiff bought the Product at or exceeding the above-referenced price because she liked the product for its personal and household use and consumption and expected a vanilla taste provided by vanilla beans.

84. Plaintiff was deceived by and relied upon the Product's deceptive labeling.

85. Plaintiff would not have purchased the Product in the absence of Defendant's misrepresentations and omissions.

86. The Product was worth less than what Plaintiff paid for it and she would not have paid as much absent Defendant's false and misleading statements and omissions.

87. Plaintiff intends to, seeks to, and will purchase the Product again when she can do so with the assurance that Product's labels are consistent with the Product's components.

Class Allegations

88. The class will consist of all purchasers of the Product who reside in Wisconsin, Illinois, Michigan, Minnesota and Iowa, during the applicable statutes of limitations.

89. Plaintiff seeks class-wide injunctive relief based on Rule 23(b) in addition to a monetary relief class.

90. Common questions of law or fact predominate and include whether defendant's representations were and are misleading and if plaintiff and class members are entitled to damages.

91. Plaintiff's claims and basis for relief are typical to other members because all were subjected to the same unfair and deceptive representations and actions.

92. Plaintiff is an adequate representatives because her interests do not conflict with other members.

93. No individual inquiry is necessary since the focus is only on defendant's practices and the class is definable and ascertainable.

94. Individual actions would risk inconsistent results, be repetitive and are impractical to justify, as the claims are modest relative to the scope of the harm.

95. Plaintiff's counsel is competent and experienced in complex class action litigation and intends to protect class members' interests adequately and fairly.

96. Plaintiff seeks class-wide injunctive relief because the practices continue.

Wisconsin Deceptive Trade Practices Act ("DPTA"), Wis. Stat. § 100.18, and  
Consumer Protection Statutes of Other States

97. Plaintiff incorporates by reference all preceding paragraphs.

98. On behalf of the proposed class members in the other states, plaintiff alleges

violations of the:

- a. Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS § 505/1, et. seq.;
- b. Michigan Consumer Protection Act, §§ 445.901, et. seq.;
- c. Iowa's Consumer Fraud Act, Iowa Code § 714.16;
- d. Minnesota Prevention of Consumer Fraud Act, Minn. Stat §§ 325F.68, et. seq.; and Minnesota Uniform Deceptive Trade Practices Act, Minn Stat. § 325D.43, et. seq.; and
- e. Wisconsin Deceptive Trade Practices Act, Wis. Stat. §§ 100.18, et. seq.

99. Defendant's labeling of its vanilla ice cream product constitutes false, deceptive and misleading advertising in violation to the Deceptive Trade Practices Act.

100. Defendant marketed its ice creams as vanilla with the intention to sell, distribute and increase its consumption by consumers.

101. Defendant's actions caused plaintiff and class members to suffer monetary loss, because they bought products labeled as vanilla (bean) purporting to be flavored only by vanilla and as a result taste like vanilla, when this was not true.

102. Plaintiff and class members would not have purchased the Product or paid as much if the true facts had been known, suffering damages.

#### Unjust Enrichment

103. Plaintiff incorporates by reference all preceding paragraphs.

104. Defendant obtained benefits and monies because the Product was not as represented and expected, to the detriment and impoverishment of plaintiff and class members, who seek restitution and disgorgement of inequitably obtained profits.

Jury Demand and Prayer for Relief

Plaintiff demands a jury trial on all issues.

**WHEREFORE**, Plaintiff prays for judgment:

1. Declaring this a proper class action, certifying plaintiff as representative and the undersigned as counsel for the class;
2. Entering preliminary and permanent injunctive relief by directing defendant to correct the challenged practices to comply with the law;
3. Injunctive relief to remove, correct and/or refrain from the challenged practices and representations, and restitution and disgorgement for members of the class pursuant to the applicable laws;
4. Awarding monetary damages and interest pursuant to the common law and other statutory claims;
5. Awarding costs and expenses, including reasonable fees for plaintiff's attorneys and experts; and
6. Other and further relief as the Court deems just and proper.

Dated: November 16, 2020

Respectfully submitted,

Sheehan & Associates, P.C.

/s/Spencer Sheehan

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Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information, and belief, formed after an inquiry reasonable under the circumstances, the contentions contained in the annexed documents are not frivolous.

Dated: November 16, 2020

/s/ Spencer Sheehan  
Spencer Sheehan